



# Public Service Commission

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FPSC RECORDS AND REPORTING

**DATE:** MARCH 12, 2001

**TO:** DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYO)

**FROM:** DIVISION OF APPEALS (BELLAK) *RCB DES*  
DIVISION OF REGULATORY OVERSIGHT (MESSER) *BSM*

**RE:** DOCKET NO. 010113-WS - PETITION FOR DECLARATORY STATEMENT BY FLORIDA WATER SERVICES CORPORATION THAT PROPOSED PROVISION OF EMERGENCY BACKUP WATER SERVICE TO RESIDENCES IN ST. JOHN COUNTY BY THE FLAGLER COUNTY SYSTEMS OF FLORIDA WATER SERVICES CORPORATION DOES NOT CONSTITUTE SERVICE WHICH TRANSVERSES COUNTY BOUNDARIES UNDER SECTION 367.171(7), F.S.

**AGENDA:** MARCH 27, 2001 - REGULAR AGENDA - DECISION ON DECLARATORY STATEMENT - PARTIES MAY PARTICIPATE AT THE COMMISSION'S DISCRETION

**SPECIAL INSTRUCTIONS:** NONE

**FILE NAME AND LOCATION:** S:\PSC\APP\WP\010113.RCM

### CASE BACKGROUND

Pursuant to Section 120.565, Florida Statutes (2000), Florida Water Services Corporation (Florida Water or petitioner) filed a petition for declaratory statement on January 26, 2001, concerning the applicability of Section 367.171(7), Florida Statutes, to its provision of emergency backup water service for approximately 15 residences located on the beach side area in southeast St. Johns County. St. Johns County Utilities has requested this backup service from Florida Water's Flagler County Systems. The service will be provided through construction of a six-inch waterline from Florida Water's northernmost point of delivery in Flagler County.

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Both of the aforementioned utilities are exempt from this Commission's regulatory jurisdiction. The petition affirms that St. Johns County operates its own utility, exempt pursuant to Section 367.022, Florida Statutes. Florida Water's Flagler County Systems are exempt because Flagler County is a "non-jurisdictional" county pursuant to Section 367.171(3), Florida Statutes.

Under the proposed arrangement, St. Johns County Utilities will construct and own the portion of the interconnection line in St. Johns County that will provide backup service and will provide all billing and collection services in St. Johns County. The service will be provided pursuant to St. Johns County Utilities policies and rules. The Florida Water Flagler County Systems will own the lines up to the meter that will be installed at the Flagler County/St. Johns County boundary. The Florida Water Flagler County Systems will continue to provide collection and billing activities only for customers in Flagler County. Florida Water will not provide direct retail service to any active customer connections in St. Johns County. No customer connection charges, customer installation fees, developer agreements, or other contractual arrangements will exist between Florida Water and any customers in St. Johns County, nor will Florida Water own any lines or appurtenant facilities there.

Petitioner Florida Water requests a declaratory statement to the effect that, under these facts, the proposed emergency interconnect does not constitute service which tranverses county boundaries so as to invoke Commission jurisdiction pursuant to Section 367.171(7), Florida Statutes. The Flagler County Interim Regulatory Authority is said to have concurred in this request.

**DISCUSSION OF ISSUES**

**ISSUE 1:** Should the Commission issue a declaratory statement in this docket?

**RECOMMENDATION:** Yes. The Commission should issue a declaratory statement concerning the status of this emergency interconnect pursuant to Section 367.171(7).

**STAFF ANALYSIS:** Section 120.565(1) provides:

any substantially affected persons may seek a declaratory statement regarding an agency's opinion as to the applicability of a statutory provision, or of any rule or order of the agency, as it applies to the petitioner's particular set of circumstances.

Florida Water's concern as to whether its provision of emergency backup service by means of the interconnect described above would invoke Commission jurisdiction pursuant to Section 367.171(7), Florida Statutes, is properly the subject of a declaratory statement petition pursuant to Section 120.565, Florida Statutes.

**ISSUE 2:** Should the Commission grant the declaratory statement requested by Florida Water?

**RECOMMENDATION:** Yes. The Commission should grant the declaratory statement requested by Florida Water.

**STAFF ANALYSIS:** The Commission has previously described the legislative intent of Section 367.171(7):

. . . to eliminate the regulatory problems that exist when utility systems provide service across political boundaries and are subject to economic regulations by two

or more regulatory agencies (i.e., Counties, Cities, or Commission).

In re: Petition of General Development Utilities, Inc. for Declaratory Statement Concerning Regulatory Jurisdiction over its Water and Sewer System in DeSoto, Charlotte, and Sarasota Counties, Order 22459, 90 F.P.S.C. 1:396 (1990). Under the facts of this case, however, Florida Water will only serve customers in Flagler County and be subject to Flagler County's regulation.

The described emergency interconnect will not invoke Commission jurisdiction pursuant to Section 367.171(7), Florida Statutes, because service transversing county boundaries is not involved. That conclusion is consistent with In re: Petition of St. Johns Service Company for Declaratory Statement on Applicability and effect of 367.171(7), F.S., 99 F.P.S.C. 10:155 (1999). Therein, the Commission stated that delivery by St. Johns Service Company of bulk water to two homeowner associations in Duval County at a point of delivery in St. Johns County did not constitute service transversing county boundaries which would invoke Section 367.171(7) Commission jurisdiction. As in this case, the petitioner therein did not own any lines or appurtenant facilities on the homeowners' side of the delivery point and had no contractual agreements with any customers there beside the bulk water agreement. As noted in Town of Jupiter v. Village of Tequesta, 713 So. 2d 429 (Fla. 4<sup>th</sup> DCA 1998),

providing Tequesta with bulk potable water at a point of delivery does not, in our opinion, constitute actual operation by Jupiter within Tequesta's consumer service area.

Similarly, since Florida Water has no direct relationship with actual consumers in St. Johns County, petitioner does not provide service in St. Johns County. Therefore, the emergency backup service interconnect described above between Florida Water and St. Johns Utilities does not render Florida Water Flagler County Systems subject to the jurisdiction of this Commission. The provisions of Section 367.171(7), Florida Statutes, are not applicable here because Florida Water Flagler County Systems is not a utility system whose service transverses the boundary of Flagler and St. Johns Counties.

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**ISSUE 3:** Should this docket be closed?

**RECOMMENDATION:** Yes, this docket should be closed.

**STAFF ANALYSIS:** Upon the issuance of the requested declaratory statement, this docket may be closed.

RCB